



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MAC/150292

PRELIMINARY RECITALS

Pursuant to a petition filed June 25, 2013, under Wis. Stat. §49.497(1m)(a), to review a decision by the Public Assistance Collection Unit (PACU) in regard to Medical Assistance (MA), a telephonic hearing was held on August 08, 2013, at Waukesha, Wisconsin.

The issue for determination is whether the PACU can compel payment of a public assistance debt.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street
Madison, Wisconsin 53703

By: Sue Rhode, Fraud Investigator
Waukesha County Health and Human Services
500 Riverview Avenue
Waukesha, WI 53188

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The petitioner received MA benefits from at least February 1, 2012-July 31, 2012.

3. On September 5, 2012 the agency issued a manual Notice of Medical Assistance Overpayment to petitioner. That notice was hand delivered to petitioner on that date at her review for benefits.
4. On October 2, 2012 a MA overpayment notice and repayment agreement were issued to the petitioner, and were followed by dunning letters (November 2, 2012, December 4, 2012, January 3, 2013). See Exhibits 1-4. The overpayment is designated as claim # [REDACTED] in the amount of \$20,425.51 for the period of February 1, 2012-July 31, 2012.
5. The Department issued an Order to Compel Payment of Liability to the petitioner on June 14, 2013. Exhibit 6. It stated that the amount of the debt owed was \$20,425.51 for claim # [REDACTED].
6. The petitioner has made no payments on the overpayment claim or entered into, or complied with, an agreement for repayment for same.

DISCUSSION

Following issuance of a MA overpayment notice, a person who then fails to enter into or adhere to a repayment agreement may be subject to an order to compel payment of that liability:

49.497(1m)(a) (a) If, after notice that an incorrect payment was made, a recipient, or parent of a minor recipient, who is liable for repayment of an incorrect payment fails to repay the incorrect payment or enter into, or comply with, an agreement for repayment, the department may bring an action to enforce the liability or may issue an order to compel payment of the liability. Any person aggrieved by an order issued by the department under this paragraph may appeal the order as a contested case under ch. 227 by filing with the department a request for a hearing within 30 days after the date of the order. *The only issue at the hearing shall be the determination by the department that the person has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment.*

(emphasis added)

Wis. Stat. §49.497(1m)(a).

The petitioner did not contest that she was overpaid; rather she argues that she may not have received the notices for the underlying overpayment. It is clear that petitioner has had many issues regarding her mental health and commitments for same and that she has not had an authorized representative to assist in the management of her public assistance benefits. However, where it is demonstrated by the evidence that the notices were correctly mailed to petitioner's correct address of record, this fact creates a rebuttable presumption of delivery that a petitioner must overcome with evidence demonstrating that the notice was not actually received.

This interpretation is confirmed by caselaw.

It is well established that the mailing of a letter creates a presumption that the letter was delivered and received. See, Nack v. State, 189 Wis. 633, 636, 208 N.W. 487(1926), (citing Wigmore, *Evidence*)2d. ed.) § 2153; 1 Wigmore, *Evidence* (2nd ed.) § 95) Mullen v. Braatz, 179 Wis. 2d 749, 753, 508 N.W.2d 446(Ct.App.1993); Solberg v. Sec. Of Dept of Health & Human Services, 583 F.Supp. 1095, 1097 (E.D.Wis.1984); Hagner v. United States, 285 U.S. 427, 430, 52. S.Ct. 417, 418(1932).

***(Portions of discussion not relevant here omitted).

This evidence raises a rebuttable presumption which merely shifts to the challenging party the burden of presenting credible evidence of non-receipt. United States v. Freeman, 402 F.Supp. 1080, 1082(E.D.Wis.1975). Such a presumption may not, however, be given conclusive effect without violating the due process clause. United States v. Bowen, 414 F.2nd 1268, 1273(3d.Cir.1969); Mullen v. Braatz, 179 Wis. 2d at 453. If the defendant denies receipt of the mailing, the presumption is spent and a question of fact is raised. (Examiner note: Citations omitted here.) The issue is then one of credibility for the factfinder. The factfinder may believe the denial of receipt, or the factfinder may disbelieve the denial of receipt.

State ex. Rel. Folores v. State, 183 Wis.2d 587, at 612-3 ((1994).

Here, the agency has established that the Notices were mailed to the petitioner's then-current residence, and she then lived there. These Notices likewise fully informed her of the negative action, and her right to appeal.

The petitioner argues that she may not have received the Notices because she may have been committed to a mental health facility during the time periods in question, or, she may have just thrown them away because she did not understand them. However, even if the evidence showed that she was committed during these time periods, the agency could not have known she was committed if she did not report a change in address to the agency. The agency also could not have known that she would throw the Notices away. There was no authorized representative for petitioner on file, and thus, I find the agency met its burden in showing that it sent the Notices properly to the petitioner.

Under the law cited above, the Department has the authority to recoup the debt now. Because the statute requires that the only issue I can consider here is whether petitioner "has not repaid the incorrect payment or entered into, or complied with, an agreement for repayment", and she has neither repaid the overpayment, or entered into or complied with a repayment agreement, I must uphold the agency's action to compel the payment now.

There is nothing preventing the petitioner from contacting the Wisconsin PACU at 1-██████████ to inquire if a repayment agreement is still possible. I also add that had I gotten to the merits of the underlying overpayment, the overpayment would likely still have been upheld as there was no dispute that the monies petitioner received put her over the asset limit for MA.

I add further, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, Wisconsin Socialist Workers 1976 Campaign Committee v. McCann, 433 F.Supp. 540, 545 (E.D. Wis.1977). In other words, I cannot decide an issue based on any fairness argument. This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

CONCLUSIONS OF LAW

The PACU correctly issued an Order to Compel Payment of Liability for an MA overpayment designated as claim #██████████ in the amount of \$20,425.51 for the period of February 1, 2012-July 31, 2012. against the petitioner.

THEREFORE, it is

ORDERED

That the petition for review herein be dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

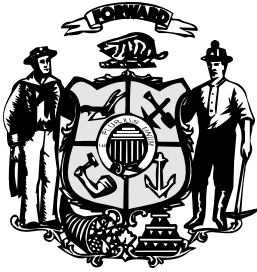
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of August, 2013

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on August 16, 2013.

Waukesha County Health and Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability